

# **EXHIBIT 3**



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May 24, 2023

Leslie C. Thorne  
Haynes Boone  
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**Re: *GMO Internet Group, Inc. et al. v. Whinstone US, Inc.*, No. 22-cv-5974 (S.D.N.Y.)**

Dear Leslie:

It has come to our attention that GMO Internet Group, Inc. and GMO Gamecenter USA, Inc. (collectively, "GMO") have engaged in actions that raise serious concerns that evidence relevant to this dispute relating to GMO's operations at Whinstone US, Inc.'s ("Whinstone") Texas facility may have been altered or destroyed.

In particular, since March 23, 2023, when a contingent from GMO, including representatives of Haynes Boone, visited the Texas facility, thousands of GMO's miners have been moved and/or destroyed. Needless to say, the condition and functionality (or lack thereof) of GMO's miners at the Texas facility are highly relevant to the claims and defenses in this matter, including with respect to GMO's claims for lost profits. We assume that GMO put a litigation hold in place in advance of filing suit as required by law. *See Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003). Any failure to preserve relevant evidence after such time would constitute spoliation.

*First*, the significant increase in activity by GMO at the Texas facility raises significant spoliation concerns. Prior to Haynes Boone's visit to the facility, GMO had a large number of miners piled on the floor next to the wall in Building A and only three GMO employees onsite to oversee GMO's operations. There were also long periods when no one from GMO showed up to the facility. For example, GMO had no employees at the Texas facility between August 18, 2021 and December 10, 2021; January 10, 2022 and March 1, 2022; and March 24, 2022 and May 9, 2022. Since Haynes Boone's visit, GMO's activity at the Texas facility has increased and GMO has removed most of the unused machines from Building A. GMO appears to be removing parts from miners and scrapping the remainder of the machines while using the salvaged parts to repair other miners, resulting in a substantial reduction in the total number of GMO miners at the Texas facility. This activity constitutes alteration and/or destruction of highly relevant evidence. Please confirm by May 30<sup>th</sup> the steps GMO has taken to preserve evidence concerning the location, functionality and condition of its machines prior to their destruction or repair.

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*Second*, we understand that throughout its time at the Texas facility GMO has had access to real-time data and diagnostic information concerning the performance of each of its miners via a GMO network that is not available to Whinstone. Please confirm by May 30<sup>th</sup> that GMO has preserved this information for all miners that were installed in the Texas facility at least from the date that this lawsuit was filed.

*Third*, GMO's relocation, modification and/or destruction of its miners risks significant prejudice to Whinstone. To prevent the further destruction of relevant evidence in light of the spoliation concerns described above, the parties must take immediate steps to preserve a record of the status quo to date. To do so, we propose that each side arrange for an appropriate consultant to visit the facility as soon as possible, and in no event later than June 20<sup>th</sup> to preserve all information each party believes will be relevant at trial, including, among other things, evidence of the number of working and non-working miners and each miner's hash rate and processing capacity. Please confirm your agreement to this proposal by May 30<sup>th</sup>.

We are available to meet and confer on these issues prior to May 30<sup>th</sup>. If we do not receive a satisfactory response, however, we reserve all rights to seek appropriate relief from the Court.

Best regards,

/s/ Maeve L. O'Connor

Maeve L. O'Connor